

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Lee Smalley Edmon, Chair
Small Claims and Limited Cases Subcommittee
Hon. L. Thomas Surh, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933,
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DATE: August 8, 2008

SUBJECT: Civil Forms: *General Denial* (revise form PLD-050) (Action Required)

Issue Statement

The content of the *General Denial* (form PLD-050), which may be used to respond to most complaints in limited civil cases and to unverified complaints in unlimited cases, has not been updated since trial court unification. The revised form removes the outdated reference to municipal and justice courts and replaces it with a reference to limited civil cases. The revised form also clarifies the text of the instructions on when to use the form. In addition, an outdated proof of service on the back of the form is removed, and directions to the Judicial Council forms for proof of service are added.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009, revise *General Denial* (form PLD-050) to remove the reference to procedures of the municipal and justice courts, to delete the proof of service on the back of the form, to clarify the general instructions, and to refer the litigant to the current proof of service forms.

Revised form PLD-050 is attached at page 5.

Rationale for Recommendation

Instructions for use of form

A general denial is permitted in a limited civil case even where the complaint or cross-complaint is verified. (Code Civ. Proc., § 431.30(d);¹ see also Code Civ. Proc., § 92(b) [answer in limited civil case need not be verified, even when the complaint is verified].) The current *General Denial* form, however, does not address this permissive filing of a general denial in terms of limited civil cases, but rather in terms of actions “subject to the economic litigation procedures of the municipal and justice courts.” This language is outdated and no longer applicable in light of trial court unification.

Revised form PLD-050 replaces the obsolete reference to justice and municipal courts in the instructions at the top of the form with the statement that the form may be used if the case is a limited civil case. The committee, on further consideration of the circulated form following the public comment period, also recommends revising the instruction concerning permissive use of the form, to clarify the exception described in the instructions. The revised instruction states:

You MAY use this form for a general denial if:

1. The complaint is not verified; *or*
2. The complaint is verified, and the case is a limited civil case (the amount in controversy is \$25,000 or less), BUT NOT if the complaint involves a claim for more than \$1,000 that has been assigned to a third party for collection.”

The revised form also adds Code of Civil Procedure sections 85 and 86 to the statutory references in the introductory statement. These sections describe what actions are “limited civil cases.”

In addition, the committee has further modified the circulated form in response to a comment that the first sentence in the instructions appeared to require that a defendant in an action in which the amount at issue is \$1,000 or less use the *General Denial* to respond to the complaint. (Comment 7 in attached comments

¹ Code of Civil Procedure section 431.30(d) states:

If the complaint is subject to Article 2 (commencing with Section 90) [Economic Litigation for Limited Civil Cases] of Chapter 5.1 of Title 1 of Part 1 or is not verified, a general denial is sufficient but only puts in issue the material allegations of the complaint. If the complaint is verified, unless the complaint is subject to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1, the denial of the allegations shall be made positively or according to the information and belief of the defendant. However, if the cause of action is a claim assigned to a third party for collection and the complaint is verified, the denial of the allegations shall be made positively or according to the information and belief of the defendant, even if the complaint is subject to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1.

chart.) The sentence has been modified to clarify that *if* a party to such an action wants to file a general denial, then the pleading must be on the Judicial Council form. (Code Civ. Proc., § 431.40(c).)

Proof of service and information box

The other key changes to the form are the deletion of the proof of service that comprised the second page of the form and revisions to the information box at the bottom of the first page.

The proof of service on the back of the current form, for personal service or mail service, does not comply with Code of Civil Procedure sections 1013 and 1013a. The form does not include the language required for proof of service by mail within an office or business establishment and does not provide any space or text for service by overnight delivery or by facsimile or e-mail transmission.

Rather than attempt to add to the current *General Denial* all the detailed provisions now required for the various methods of service, the new form eliminates the proof of service altogether and, in the information box at the bottom of the page, refers litigants to the current Judicial Council Proof of Service forms, *Proof of Personal Service—Civil* (form POS-020), *Proof of Service by First Class Mail—Civil* (form POS-030), and *Proof of Service—Civil* (form POS-040) (covering service by personal delivery, United States mail, overnight delivery, messenger service, fax transmission, and e-mail). These stand-alone proof of service forms provide far more detail, more clearly, than could be fit onto the back of the *General Denial*.

The information box at the bottom of the revised form also provides more detailed instructions concerning service and the filing of a proof of service, than those were previously written at the top of page two of the form.

In addition, a minor revision has been made to the first sentence in the information box. It now informs the litigant that failure to bring a cross-complaint may cause the litigant to lose the *right to bring* the claim. This change is a more accurate expression of the result of failing to bring a mandatory cross-complaint.

Other revisions

Other minor changes made to the form are that the attorney/party information box (top left box), the county and court address box (second left box), and the box for the parties' names have been revised to conform to current Judicial Council form standards. This includes providing spaces for an e-mail address and a fax number.

Alternative Actions Considered

The committee considered revising the proof of service on the back of the current form to include the information required for all the various methods of service currently permitted by statute. The committee rejected this alternative in light of the existence of other proof of service forms that provide more detailed instruction than could be fit on this form.

Comments From Interested Parties

The proposed form was circulated for public comment during the spring 2008 comments period. Comments were received from eight individuals and organizations, including several courts.² The commentators were in substantial agreement with the proposal. Superior Court of Ventura County's Self-Help Access Center asked for two minor modifications. The committee agreed with the commentator that the first sentence of the instructions was ambiguous and, as discussed above, has modified that sentence along with the second sentence. The committee disagreed with the commentator's other request, to reorganize the instructions, and believes that the order in the current form is appropriate. (See comment 7.)

Implementation Requirements and Cost

There should be no significant implementation requirements or cost other than that of making the form available to the public.

² A chart summarizing the comments and the committee's responses is attached at pages 6–7.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT v. 9 09/03/08 not approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
GENERAL DENIAL	CASE NUMBER::

If you want to file a general denial, you **MUST** use this form if the amount asked for in the complaint or the value of the property involved is \$1,000 or less.

You **MAY** use this form for a general denial if:

1. The complaint is not verified; **or**
2. The complaint is verified and the case is a limited civil case (the amount in controversy is \$25,000 or less),
 BUT NOT if the complaint involves a claim for more than \$1,000 that has been assigned to a third party for collection.

(See Code of Civil Procedure sections 85–86, 90–100, 431.30, and 431.40.)

1. DEFENDANT (*name*):
 generally denies each and every allegation of plaintiff's complaint.
2. ☐ DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint (*attach additional pages if necessary*):

Date:



(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your right to bring the claim. (See Code of Civil Procedure sections 426.10–426.40.)

The original of this *General Denial* must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. There are two main ways to serve this *General Denial*: by personal delivery or by mail. It may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Be sure that whoever serves the *General Denial* fills out and signs a proof of service. You may use the applicable Judicial Council form (such as form POS-020, POS-030, or POS-040) for the proof of service.

SPR08-20**Civil Form: General Denial** (revise form PLD-050)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Catherine Castaldi, President Newport Beach	A	No specific comments.	Commentator's agreement is noted.
2.	State Bar of California, Committee on Administrative Justice By Saul Bercovitch, Staff Attorney San Francisco	A	CAJ supports this proposal.	Commentator's agreement is noted.
3.	Superior Court of Los Angeles County	A	No specific comments.	Commentator's agreement is noted.
4.	Superior Court of Riverside County By David Gutknecht Supervising Management Analyst	A	The proposed amendments to the General Denial form (PLD-050) are necessary in order to delete the obsolete references to municipal and justice courts and the outdated proof of service on the back of the form.	The committee agrees.
5.	Superior Court of San Bernardino County By Debra Meyers Director of Staff Counsel Services and Self-Help Division	A	No specific comments.	Commentator's agreement is noted.
6.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comments.	Commentator's agreement is noted.
7.	Superior Court of Ventura County Self-Help Legal Access Center By Tina Rasnow	AM	1. The instructions regarding use of the form are still confusing to SRLs [self-represented litigants]. I think it would be clearer to state when the form	1. The committee approves the current order of the form, stating first when the form <i>must</i> be used and, second, when it <i>may</i> be used,

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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	Commentator	Position	Comment	Committee Response
	Senior Attorney/ Coordinator		<p>MUST be used, when it CANNOT be used, and then when it MAY be used. By putting it in this order, there is less chance the form will be used incorrectly.</p> <p>2. To amend my previous comment on the new proposed form, we have another issue with respect to the mandatory use of the form. We cannot find in CCP 431.40 any requirement that a general denial be used when a complaint seeks \$1,000 or less, in fact the statute is written so as to give the defendant the “option” to use a general denial. Why does the form use the word “MUST”?</p>	<p>followed by the exception to that second rule.</p> <p>2. The requirement is not that a general denial must be filed when a complaint seeks less than \$1,000, but that <i>if</i> a general denial is filed in such a case, it must be on this form. See Code Civ. Proc., § 431.40(c). The language in the first paragraph in the form has been clarified in response to this comment.</p>
8.	Derek Tabone, Attorney Van Nuys	A	No specific comments.	Commentator’s agreement is noted.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.